

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

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Petition for Declaratory Ruling that AT&T's
Phone-to-Phone IP Interexchange Services are
Exempt from Access Charges

WC Docket No. 02-361

**REPLY COMMENTS OF
MINNESOTA INDEPENDENT COALITION**

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The Minnesota Independent Coalition ("MIC") respectfully submits the following Reply Comments as provided in the Commission's Public Notice dated December 3, 2002. The members of the MIC are all "rural telephone companies"¹ providing local exchange service in the State of Minnesota. The Initial Comments filed on December 18, 2002 show that the Commission should deny AT&T's Petition for Declaratory Ruling exempting all of its Internet Protocol ("IP") phone-to-phone interexchange telephony services from interstate access charges.

SUMMARY

The Initial Comments show that there is no basis to grant AT&T's Petition and that there are good reasons to issue a declaratory ruling that AT&T's IP phone-to-phone interexchange services are subject to access charges to the same extent as AT&T's other telecommunications services. Specifically, the Initial Comments show that:

¹ 47 U.S.C. § 153(37).

1. LECs provide the same services to originate and terminate both AT&T's IP phone-to-phone interexchange services and AT&T's other interexchange services;
2. AT&T's IP phone-to-phone interexchange services are "telecommunications services" and not "information services";
3. AT&T's IP phone-to-phone interexchange services involve nothing more than a protocol change *within* AT&T's transport network, which provides no basis for exemption from access charges;
4. The adverse effects of granting AT&T's request would be severe, particularly for rural LECs; and
5. AT&T's practices, which are intended to impede LECs from billing AT&T for access services, should be declared unlawful.

I. LEC'S PROVIDE THE SAME SERVICES TO ORIGINATE AND TERMINATE BOTH AT&T'S IP INTEREXCHANGE SERVICES AND AT&T'S OTHER INTEREXCHANGE SERVICES.

The Initial Comments confirm that LECs provide the same services and incur the same costs to originate and terminate both AT&T's IP interexchange services and its other interexchange services and that the technology used by AT&T to transport interexchange calls does not affect the services provided by the LEC and the costs that the LEC incurs.² As

OPASTCO notes:

[T]he fact that IP technology is used *to transport the call* does not reduce in any way the LEC's costs of either originating or terminating the call.³ (Emphasis added).

These comments confirm the Commission's tentative conclusion in its Universal Service Report that:

² OPASTCO Comments at 2-3; Western Alliance Comments at 6; Missouri Small Company Group Comments at 2-3; Comments of Washington, Oregon, Colorado and Montana Associations at 16.

[T]o the extent the providers of those services [phone-to-phone IP telephony services] obtain the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers, we may find it reasonable that they pay similar access charges.⁴

Thus, there is no basis to distinguish AT&T's use of LEC facilities in connection with its IP interexchange services from its use of LEC facilities in connection with the rest of its telephony services and, thus, no basis to justify exempting AT&T's IP phone-to-phone interexchange services from payment of access charges.

It is also clear that AT&T has ignored the substantial reductions in access charges that have occurred, which refute its arguments that access charges are inefficient and above cost. As OPASTCO notes:

To make this allegation [of inefficient and above cost access rates], AT&T reaches to an outdated Notice of Proposed Rulemaking issued by the Commission in 1996. However, the access charges in place at the time of the Notice ... were far higher than those in effect today For AT&T to base its argument on access rates that no longer apply only serves to illustrate the petition's lack of merit.⁵

Accordingly, it is clear that neither the services provided by the LECs nor the level of the access charges for those services provide any basis for exemption for AT&T's IP phone-to-phone interexchange services.

II. AT&T'S IP PHONE-TO-PHONE INTEREXCHANGE SERVICES ARE "TELECOMMUNICATIONS SERVICES" NOT "INFORMATION SERVICES."

The Initial Comments also make it clear that AT&T's IP telephony services are "telecommunications services" and not "information services."⁶ To determine the classification

³ OPASTCO Comments at 2-3.

⁴ *Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd 11501 (1998) ("Universal Service Report") at ¶ 91.

⁵ OPASTCO Comments at 5-6.

⁶ USTA Comments at 7; NTCA Comments at 2-6; SBC Comments at 6-8; NYPSC Comments at 4-6; Comments of Washington, Oregon, Colorado and Montana Associations at 13-16; Western Alliance Comments at 5-6; Alaska Exchange Carriers' Comments at 2-5; Frontier Comments at 6; Sprint Comments at 5.

of a service, the Commission should focus on the nature of the service being offered to customers, not the technology used to provide services. As the NCTA stated:

A telecommunications service is a telecommunications service regardless of whether it is provided using PSTN, the Internet, wireless, cable, satellite or some other infrastructure. Its classification should depend on the nature of the service being offered to customers.⁷

The Initial Comments and the record in this proceeding confirm that the characteristics of AT&T's IP phone-to-phone interexchange services provide no basis for granting an exemption from access charges. Rather the Initial Comments and record in this proceeding confirm that the Commission was correct when it tentatively concluded that:

From a functional standpoint, users of these services [IP telephony] obtain only voice transmission, rather than information services such as access to stored files. The provider does not offer a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, *the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them "information services" within the meaning of the statute, and instead bear the characteristics of "telecommunications services."*⁸ (Emphasis added.)

Further, as USTA points out, Part 69 provides clear guidance and shows that access charges should be applied to AT&T's IP phone-to-phone interexchange service and that there is no basis for granting any exemption for IP phone-to-phone telephony services.⁹

III. AT&T'S IP PHONE-TO-PHONE INTEREXCHANGE SERVICE INVOLVES NOTHING MORE THAN A PROTOCOL CHANGE WITHIN AT&T'S TRANSPORT NETWORK, WHICH PROVIDES NO BASIS FOR EXEMPTION FROM ACCESS CHARGES.

The Initial Comments show that the only difference between AT&T's IP phone-to-phone interexchange services and its other telecommunications services is a change in the technology that AT&T uses to provide that service that occurs entirely within AT&T's interexchange

⁷ NTCA Comments at 4.

⁸ *Universal Service Report* at ¶ 89.

⁹ USTA Comments at 5.

transport network.¹⁰ The Initial Comments also show that AT&T's IP phone-to-phone interexchange is nothing more than a traditional telecommunications service provided through an evolving technology.¹¹ AT&T has done nothing more than change the protocol (to IP) that it uses within its transport network to provide a traditional service (interexchange phone-to-phone telephony).

Changes in the technology used to provide interexchange telecommunications service are common. These changes have included changes from analog to digital to packet technology¹² and have used a variety of facilities, moving from copper to microwave to satellite and fiber optics.¹³ None of these changes in technology or facilities have ever been subsidized by the Commission. Further, IP telephony is merely one of several formats for assembling data into packets.¹⁴

Notwithstanding the fact that changes in the technology of providing interexchange services are common, AT&T is asking the Commission to "choose IP telephony as the clear winner over all other competing technologies, by establishing a special access charge exemption for this particular technology."¹⁵ Instead, the Commission should stay with its long standing policies of not subsidizing the use of a new technology (IP) to provide an already established service (interexchange telecommunications service) and of promoting technological neutrality. Accordingly, the Commission should reject the AT&T request.

¹⁰ USTA Comments at 6-7; GVNW Comments at 6-7; Frontier Comments at 4-5.

¹¹ USTA Comments at 9; GVNW Comments at 4-5.

¹² NECA Comments at 4.

¹³ OPASTCO Comments at 3.

¹⁴ Frontier Comments at 3.

¹⁵ Frontier Comments at 3.

IV. THE ADVERSE EFFECTS OF GRANTING AT&T'S POSITION WOULD BE SEVERE, PARTICULARLY FOR RURAL LECs.

The adverse consequences of granting AT&T's petition would be severe and would affect both access charge revenues and universal service funding.¹⁶ The effects would be particularly severe for rural LECs which still recover a substantial part of their total costs from access charge revenues.¹⁷ As OPASTCO notes:

Rural LECs rely on access charges for a significant portion of their revenue requirement. Providing IXC's with below-cost access to the local loop results in revenue decreases for rural LECs, which in turn forces them to delay network upgrades, impairs their customer service efforts, and places upward pressure on local rates for telephone service.¹⁸

It is also clear that the impact of reducing revenues needed to recover the costs of local facilities will have particular impact on rural LECs with their far more extended and high cost local networks. As noted by the Western Alliance:

Particularly in the rural areas ..., low population density and rugged terrain result in very long and expensive loops. Frequently, the "last mile" is really the "last 10-to-50 miles."¹⁹

Switching costs are also higher in rural areas where low populations preclude economies of scale.²⁰

The impact of the AT&T petition is not limited to AT&T because granting AT&T's request would also provide substantial incentives for other IXC's to engage in arbitrage²¹ and evade access charges by unnecessary in-and-out IP protocol changes.²² Other IXC's are also engaged in similar activities.²³ Accordingly, it is clear that the impact of the Commission's

¹⁶ NTCA Comments at 7-8; OPASTCO Comments at 4; Sprint Comments at 14.

¹⁷ OPASTCO Comments at 4-5; NECA Comments at 6; Frontier Comments at 3; Sprint Comments at 11.

¹⁸ OPASTCO Comments at 4.

¹⁹ Western Alliance Comments at 8.

²⁰ Ibid.

²¹ NYPSC Comments at 6.

²² Sprint Comments at 10-11; Western Alliance at 7.

²³ SBC Opposition at 14-15; Sprint Comments at 10-11.

decision will have an effect far beyond AT&T. A decision to exempt an entire technology used to provide telecommunications service from application of the Commission's rules should not be made on the basis of the record in this proceeding.

V. AT&T'S PRACTICES OF EVADING ACCESS CHARGES FOR ITS IP TELEPHONY SERVICES SHOULD BE DECLARED UNLAWFUL.

The Initial Comments also demonstrate that AT&T is engaged in practices that are intended to evade payment of access charges. These practices include the purchase of local services under the ISP exemption when the real purpose is unrelated to ISP services, routing interstate calls through local CLEC facilities, and removal of CPN of originating customers.²⁴ Contrary to AT&T's practices, it is clear that Part 69 requires to AT&T to pay access charges on its IP telephony services.²⁵ As USTA noted:

Under Part 69 of the FCC's rules, LECs receive access charges from IXC's for providing connections to their customers. ... The FCC's rules require that telecommunications carriers providing interexchange phone-to-phone telecommunications services via the PSTN to pay access charges regardless of whether the carrier utilizes circuit switching or Internet Protocol. AT&T has not presented any evidence in its Petition that its IP telephony service is using the PSTN any differently than when it transports long distance service.²⁶

Similarly, Verizon states:

The law is simple and straightforward. Part 69 of the Commission's rules establishes LEC access charges and prescribes who must pay for them. ... "[I]nterexchange carriers" pay access when they use local switching to provide interstate "telecommunications services," and that's precisely what AT&T is and what it is doing.²⁷

Part 69 clearly requires AT&T to pay access for origination and termination of phone-to-phone interexchange services, regardless of the technology that the IXC uses to transport that

²⁴ SBC Opposition at 11-16; Verizon Opposition at 5-6.

²⁵ USTA Comments at 5.

²⁶ USTA Comments at 5.

²⁷ Verizon Opposition at 2.

traffic within its network. Accordingly, the Commission should issue a ruling that all interstate telecommunications services are subject to access charges, including IP telephony services.²⁸

IV. CONCLUSION.

For the reasons set forth above, the Commission should deny AT&T's Petition for a declaratory ruling and instead issue a ruling that all interstate telecommunications services are subject to access charges, including IP telephony services.

Dated: January 24, 2003.

Respectfully submitted,

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²⁸ SBC Opposition at 19-20.

CERTIFICATE OF SERVICE

I, Kim R. Manney, hereby certify that on the 24th day of January, 2003, a copy of the Reply Comments by the Minnesota Independent Coalition was sent by first class United States mail, postage prepaid, to those listed on the attached list.

By: /s/ Kim R. Manney
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